

### Judge Baker, cont.

Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

### Judge Robb, cont.

American Judicature Society, a Master Fellow of the Indiana State Bar Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in

recognition of support and service to IUPUI and Indiana University; Ball State University's 2004 Bernadette Perham "Indiana Women of Achievement" Award; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation. Judge Robb authored "Reflections

of Baseball, Life and the Law" in the Indiana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and Chaired the 2010 ABA's Appellate Judges Council - Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Chief Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a Lieutenant on active duty in the United States Navy.

## Science in the courtroom: Not so elementary, dear Watson

In the very first Sherlock Holmes story, "A Study in Scarlet," Holmes claims to have discovered a unique reagent for identifying hemoglobin. "Why, man, it is the most practical medico-legal discovery for years," he exclaims to Dr. Watson. "Don't you see that it gives us an infallible test for blood stains?"

To which a modern judge might ask, "Says who?"

It's a natural question. Most science advances only after replication and review by the broader scientific community. Courts are properly cautious, then, about the use of novel scientific methods in both criminal and civil cases.

Judge Cale J. Bradford of the Court of Appeals of Indiana, who teaches Forensic Science and the Law at IUPUI, said courts must consider two threshold issues about scientific evidence. First, is the evidence relevant enough to help prove or disprove an issue in the case? Second, is it sufficiently reliable under Indiana Rule of Evidence 702?

The first impactful analysis of

whether and when to accept scientific evidence in federal courts came in *Frye v. United States*, a 1923 case decided by the District of Columbia Circuit. *Frye* essentially said that scientific evidence should only be admitted if it's generally accepted by the relevant scientific community (e.g., physics by physicists, chemistry by chemists, etc.).

But just as science isn't static, neither are courts. *Frye* was succeeded in 1975 by Federal Evidence Rule 702, which has in turn been interpreted by two U.S. Supreme Court cases known as *Daubert* and *Kumho Tire*.

In short, *Daubert* outlined four criteria for determining the reliability of a given scientific method (including testing, peer review, and error rates), while *Kumho* extended the standards for expert opinion testimony to nonscientific expert testimony as well.

But those cases don't automatically apply to state courts. As the Indiana Supreme Court held in *Turner v. State*, a 2011 case, *Daubert* is

"instructive" but not binding on Indiana courts.

Not that Indiana ignores federal guidance. Judge Bradford said Indiana evidence rules closely model federal rules, including the trial judge's role as gatekeeper for the admission of expert testimony.

Judges aren't the only ones who grapple with scientific complexities. Trial attorneys have to coax understandable testimony from expert witnesses, and lay juries have to weigh that evidence – perhaps influenced by media depictions of scientific certainty.

"There are varied opinions on whether the 'CSI' factor is real or perceived," said Judge Bradford, who presided at more than 250 jury trials as judge of Marion Superior Court.

As a practical solution, he said, lawyers and judges in "expert" cases should exercise special care during jury selection, direct and cross-examination, and jury instructions to properly educate and inform jurors about expert testimony.

## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE LAKE COUNTY GOVERNMENT CENTER

### Macy v. State

#### ORAL ARGUMENT:

Wednesday, April 30, 2014  
1 p.m. CDT

#### APPEAL FROM:

Miami Superior Court  
The Honorable  
Daniel C. Banina, Judge

#### CRIMINAL LAW ISSUE:

Whether sufficient evidence supports Appellant's conviction for resisting law enforcement.

## Synopsis: Case No. 52A02-1309-CR-808

On Aug. 25, 2012, animal control officers in Miami County received a report that two dogs owned by Maddox Macy had bitten one of Macy's neighbors. The next morning, Officer Roger Bowland accompanied two animal control officers to Macy's residence. Macy was uncooperative. Despite being asked to calm down, Macy was loud and demanded answers from the officers. Officer Bowland threatened to arrest Macy if she did not calm down.

Officer Bowland then walked across the street to the bite victim's house. Macy followed down the sidewalk and began "making

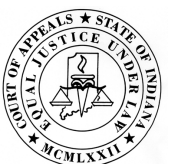
a scene." After Macy refused to calm down, Officer Bowland arrested Macy and placed her in the front seat of his police car.

Macy opened the door of the car, stepped outside, and continued to yell. Officer Bowland told Macy to get back into the car, but she refused. Officer Bowland forced Macy back into the car, but Macy kept her feet on the ground outside the door and refused to put her feet inside the door. Officer Bowland had to pick up Macy's feet and place them inside the car.

Macy was convicted of disorderly conduct and resisting law enforcement. Macy appeals her conviction for resisting law enforce-

ment, arguing she did not forcibly resist. The State argues there was sufficient evidence to support her conviction because Macy refused to get back into the police car or place her feet inside the car.

A person is guilty of resisting law enforcement if she knowingly or intentionally forcibly resists, obstructs, or interferes with a law enforcement officer while the officer is lawfully engaged in the execution of the officer's duties. Indiana Code § 35-44.1-3-1(a)(1).



## WHAT HAPPENS AFTER ORAL ARGUMENT?

After oral argument, the judges confer to decide the outcome. A designated writing judge drafts an opinion for the others' review. Final language may involve several drafts and significant collaboration.

Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, some reverse in part, and some do both. Not infrequently, the opinion instructs the trial court about the next appropriate course of action.

Many opinions are unanimous, although non-unanimous decisions (2-1) are not uncommon. Dissenting judges usually express their views in a separate opinion that becomes part of the permanent record of the case. Judges might also write separate, concurring opinions that emphasize different points of law or facts than

the main opinion.

(Historically, the ideas contained in dissents have sometimes been adopted as law—over time—on a particular issue.

No rules or laws govern how fast the court must issue an opinion. But the court strives to decide cases within four months of receiving all briefs, transcripts and other records.

Once issued, all opinions are published on the court's website and maintained in the permanent records of the Clerk of Appellate Courts.

Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer within a prescribed time period. But transfer is not automatic; the Supreme Court can grant or deny transfer without explaining why.

If the petition is denied, the Appeals Court decision stands.

### SNAPSHOT PORTRAIT OF APPELLATE JUDGES

■ Six of the court's first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.

■ Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.

■ Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.

■ One of the five original members of the court, Jephtha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.

■ Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.

■ Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.

■ Judge John C. McNutt's son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.

■ One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War and wrote "The Common Sense Lawyer."

■ Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.

■ Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson's ambassador to Chile.

## Today's Panel of Judges

### The Honorable James S. Kirsch (Marion County)



**James S. Kirsch** was appointed to the Court of Appeals in 1994, was retained by election in 1996 and 2006 and served as Chief Judge from 2004-2007. He also has served as a state trial court judge and has extensive national and international teaching experience.

A native of Indianapolis, Judge Kirsch graduated from Indiana University School of Law-Indianapolis (J.D., cum laude) and Butler University (B.A. with honors).

He served as Judge of the Marion Superior Court from 1988 to 1994 and as Presiding Judge of the Court in 1992. From 1974-1988, he practiced law with the firm of Kroger, Gardis & Regas in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. He has taught law in 21 countries on four continents and currently holds university-level faculty appointments in Germany, Hungary and the Netherlands.

Judge Kirsch is also committed to continuing legal education and has served on the faculty of more than 200 CLE programs. In 1990, the Indianapolis Bar Association presented him with its highest award, the Honorable Paul H. Buchanan Award of Excellence.

Judge Kirsch also has deep ties to the Indiana State Bar Foundation, the Indianapolis Bar Association and Bar Foundation and to community organizations that include the United Way of Central Indiana, the Indianapolis Urban League, the Legal Aid Society of Indianapolis and the Stanley K. Lacey Leadership Foundation.

Judge Kirsch and his wife, Jan, have two children.

### The Honorable John G. Baker (Monroe County)



**John G. Baker** was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court's First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana's judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker's many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

In 2011 he joined the Board of

### The Honorable Margret G. Robb (Tippecanoe County)



**Margret G. Robb** was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O'Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as **Chief Judge**; the first woman to hold that position in the Court's more than 100 year history.

Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender.

She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association.

She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute.

She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association's Bar Leader Series, and is a member of the American Bar Foundation,

## ATTORNEYS FOR THE PARTIES

### For the Appellant

**Jill Acklin** is a native Hoosier and has been an attorney since 2002. She grew up in Anderson and now lives in Westfield with her two children. She graduated *cum laude* from Butler University in 1999 with a B.A. in history and French, and graduated *summa cum laude* from Indiana University's Robert H. McKinney School of Law in 2002.

Immediately upon graduating from law school, she clerked for Indiana Supreme Court Justice Robert D. Rucker and then clerked for this court's current Chief Judge, Nancy H. Vaidik.

In 2005, Ms. Acklin chose to be a stay-at-home mother and founded her own law office with a focus on appellate practice. Her practice area includes appeals in criminal defense with all levels of felonies and misdemeanors, juvenile delinquency, termination of parental rights/child-in-need-of-services cases, and in family law cases involving adoption, custody, and parenting time. She also handles post-conviction relief cases.

She is frequently appointed as appellate counsel by trial court judges throughout the state. To date, she has handled nearly 150 appeals in the Indiana Appellate Courts. Ms. Acklin has also served as an adjunct professor of law and has been a speaker at continuing education classes for fellow attorneys.

### For the Appellee

**Jesse Drum** is from Burlington, KY. He graduated from Northern Kentucky University in 2009 with a BA in English Literature and earned his law degree from Indiana University Maurer School of Law in 2013.

While in law school, he was a Notes and Comments Editor for the Indiana Law Journal. His Note, "Oh, it is you, is it?": Closing the Door on Reasonable Resistance to Unlawful Police Entry in Indiana," was published in Volume 88 of the ILJ.

Jesse passed the July 2013 Indiana Bar Exam and is admitted to practice in Indiana.

He joined the Office of the Indiana Attorney General as a law clerk in 2012 and was sworn in as a Deputy Attorney General in 2014. Although he has written many briefs, this is his first oral argument.

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